Constitutional activity
from patriation to
Charlottetown

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CONSTITUTIONAL ACTIVITY FROM PATRIATION TO CHARLOTTETOWN (1980 - 1992)

Mollie Dunsmuir
Law and Government Division

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OVERVIEW

Canada, it is often remarked, is a country uniquely engrossed in constitutional debate. Because of the sustained nature and intensity of that debate, it is often possible to become confused about even comparatively recent events. This paper briefly compares some of the constitutional options and proposals put forth in the last 15 years, largely in the context of the debate over the Meech Lake Accord and Quebec's five conditions for acceding to the *Constitution Act*, 1982, which the Accord addressed.

The paper is divided into three parts. Part 1 sketches the situation from just before the Quebec referendum of 1980, through the patriation of the Constitution, to the 1987 Meech Lake Accord. Part 2 deals with the Meech Lake Accord, including the reaction to Quebec's five conditions for signing it, and events up to June 1990, when the Accord ran out of time and died. Part 2 goes on to describe how the five conditions were treated in the federal proposals of September 1991, the Beaudoin-Dobbie Report in February 1992, and the Charlottetown consensus agreement in August 1992, including the Draft Legal Text accompanying it.[1] Part 3 deals with events from Meech Lake to the 1992 Referendum on the Charlottetown agreement. Because the paper is descriptive and retrospective, there is little attempt at analysis or conclusions.

The focus is on Quebec's five conditions for accepting the Constitution Act, 1982. First addressed in the Meech Lake Accord, these conditions remain at the heart of our constitutional dilemma:

- a "distinct society" clause, apparently as an interpretive provision for the Constitution as a whole;

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(1) See Appendix 1 for a chart, "Responses to Quebec's Five Conditions (1987-1992)," comparing the various responses to the five conditions.

- a unique degree of control over the selection and settling of immigrants;
- either a veto over constitutional amendments, or full compensation for opting out of any amendments that affect provincial powers;
- limitations on the federal spending power; and
- the entrenchment of the convention whereby three Supreme Court justices are from Quebec, which should have a say in their selection.

The term "common law Canada" is used to describe Canada apart from Quebec. Quebec is governed by civil law concepts, and the *Code Civil*. Civil law works on the basis of a clearly articulated set of written principles, from which the court can deduce the law in any given situation. A civil law approach to constitutional law would naturally find it proper that any major changes in the constitutional system be incorporated into the written document.

Common law, on the other hand, is governed by precedents; thus, constitutional law is perceived as growing from a variety of decisions dealing with specific fact situations. Changes in constitutional language, such as were introduced with the *Canadian Charter of Rights and Freedoms*, means a period of legal uncertainty until the Supreme Court of Canada delineates the boundaries of the new language. Whereas the civil law prefers precision and clarity, the common-law, like the English language with which it is associated, excels in flexibility (and sometimes ambiguity).

A well-known cartoon describes these two views of the world. The civilian lawyer is found looking through a telescope to discover the principles that guide the universe. The common-law lawyer has a magnifying glass, and is scouring the earth for specific clues to the situation at hand.[2] It is perhaps not surprising that two such different approaches to the Constitution result in some misunderstanding and frustration.

Clearly, any attempt to summarize the events of the past 15 years must be overly simplistic. To compensate for this, the paper refers where appropriate to other documents dealing with specific events in more detail.

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(2) See Appendix 2.

PART 1: TO THE MEECH LAKE ACCORD

In 1967, Canada celebrated its centenary as a nation. The nationalistic fervour of that year for many highlighted the irony that Canada alone among the modern democracies did not have the power to amend its own Constitution. In 1867, the Fathers of Confederation had not been able to agree upon an amending formula and the matter had been simply put aside.

In 1931, the Statute of Westminister, which confirmed the independent status of the original British colonies, offered an opportunity to remedy the situation, but again there was no agreement within Canada between the federal and provincial governments. Instead, the country requested a specific section in the Statute to confirm the status quo (section 7). Up to and including 1982, any amendments to the Constitution of Canada, other than those dealing with internal arrangements of the federal government, had to be passed by the British Parliament.

Starting in 1968, federal and provincial governments began a wide-ranging review of the Constitution, which had gone through various iterations by 1980. Although various issues were discussed, patriation with a Canadian amending formula was always a central issue.

In 1980, Rene Levesque, then Premier of Quebec, called a referendum on the issue of a mandate to negotiate sovereignty-association between Quebec and the rest of Canada. In May 1980, the voters of Quebec rejected the proposal by approximately 60-40%. On 10 June 1980, the Government of Canada tabled in the House of Commons "Priorities for a New Canadian Constitution," and intensive federal-provincial negotiations followed over the summer months. A federal-provincial First Ministers' Conference in September 1980 failed to reach agreement. On 6 October 1980, the Government of Canada tabled in the House of Commons a "Proposed Resolution for *Joint Address to Her Majesty the Queen Respecting the Constitution of Canada.*" The federal proposal for unilateral patriation included a charter of rights and freedoms, a commitment to the principles of equalization, an interim amending formula, which anticipated a referendum, and a final amending formula.

With the exception of Ontario and New Brunswick, the provinces were not favourably inclined towards the federal pre-emption of the patriation process. Six provinces, later joined by two others, commenced a constitutional challenge, putting questions, as is the right of provincial governments, to three separate provincial Courts of Appeal. In early 1981, the confrontation rapidly heightened. As the Trudeau government tried to hurry the resolution through Parliament, and federal and provincial lobbying at Westminister increased, the three provincial Courts of Appeal split on whether the federal action was constitutionally proper. On 13 April 1981, the Levesque government won another term in Quebec, and on 16 April 1981 Premier Levesque met with the other seven premiers opposing unilateral patriation.

On 16 April 1981, the eight dissenting provinces issued a press release describing the "Constitutional Accord: Canadian Patriation Plan" and the associated amending formula, which stated:

> This amending formula is demonstrably preferable for all Canadians to that proposed by the federal government because it:
>
> - recognizes the equality of provinces within Canada;
> - avoids the need for a referendum;
> - removes the absolute veto power that the federal government proposes to give the Senate over constitutional reform, including Senate reform.

In return for not insisting upon a Quebec veto, Premier Levesque obtained a constitutional guarantee of total compensation for opting out:[3]

> In the event that a province dissents from an amendment conferring legislative jurisdiction on Parliament, the Government of Canada shall provide reasonable compensation to the government of that province, taking into account the per capita costs to exercise that jurisdiction in the provinces which have approved the amendment.

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(3) Premier Levesque's view on the veto, *vis-à-vis* compensation, is discussed in more detail under the section dealing with the amending formula.

In September 1981, the Supreme Court of Canada found that a unilateral request by the federal government, without provincial concurrence, was legal but was not constitutional insofar as it breached a constitutional convention. Constitutional conventions play an important role in a common law federation such as Canada. Perhaps the best example is the convention that a government defeated at the polls must resign; there is nothing in law which states that a government defeated at the polls must hand over the reins of power, but clearly a refusal to do so would put the society in crisis. Thus, the statement by the Supreme Court that the federal government was acting legally but in breach of constitutional convention was conclusive. Everything else aside, it was clear that the British Parliament, the fount of common-law constitutional convention, would never accede to a request that the Supreme Court of Canada had declared to be in violation of Canadian constitutional convention.

Opposition to a proposed charter of rights and freedoms was what effectively united the common-law premiers and Premier Levesque. As Premier Levesque later described in his *Memoirs*, the Charter had:

> the singular virtue of giving everybody the goose pimples. Such was the case, on our side, because we knew that it would be an instrument to reduce the powers of Quebec, and so it was on the side of the Anglo-Canadian provinces because this kind of American-style "Bill of Rights" is completely foreign to the unwritten tradition of British institutions.(4)

As events evolved, however, there was not the same meeting of minds on referendums, which are traditionally associated with direct democracies, such as the United States or Switzerland, rather than with representative democracy, which, until the 1980s, was the model favoured by Canada. The common-law premiers were particularly reluctant to face the federal government in a referendum on the proposed Charter, which they opposed on common-law constitutional principles but knew would be supported by a majority of the populace.

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(4) René Levesque, *Memoirs* (trans. by Philip Stratford), McClelland and Stewart, Toronto, 1986, p. 318.

In an attempt to resolve what was effectively a stand-off, a First Ministers' Conference was convened on 2 November 1981. By the morning of 4 November 1981, interpersonal tensions were running high. By all accounts, it seems clear that Prime Minister Trudeau and Premier Levesque were engaged in battle as to which spoke for Quebec. As the morning drew to a close, Prime Minister Trudeau challenged Premier Levesque to a referendum -- anathema to the other premiers. Premier Levesque accepted, and Prime Minister Trudeau immediately announced to the awaiting press:

> So we have a new alliance between the Quebec government and the Canadian government. And the cat is among the pigeons.

Realizing that Prime Minister Trudeau and Premier Levesque would never sign the same constitutional document, some provincial representatives began intense negotiations with their federal counterparts. As the night progressed, other provinces were included in groups of two or three. By morning, only Premier Levesque had neither been asked about nor agreed to the proposed compromise.

The agreement signed by Ottawa and the nine other provinces on 5 November 1981, was essentially a combination of Prime Minister Trudeau's "Bill of Rights" and the amending formula suggested by the provinces. The provision for compensation for opting out was gone, a particularly bitter pill for Premier Levesque,[5] although it was later reinstated with respect to educational and cultural matters (section 40, *Constitution Act, 1982*.)

On 1 December 1981, the National Assembly of Quebec passed a resolution declaring that it could not accept the plan to patriate the Constitution, unless it met certain conditions:

- a recognition that the two founding peoples of Canada are fundamentally equal and that Quebec, by virtue of its language, culture and institutions, forms a distinct society within the Canadian federal system and has all the attributes of a distinct national community;

---

(5) Premier Levesque had earlier described his frustration with the way in which the other premiers "made the opting-out provision a tough one. For that matter, even if Trudeau's attitude drove them up the wall, they themselves were still attached to the notion of "national unity" which, in the last analysis, an Anglo-Canadian puts before provincial autonomy" (Levesque (1986), p. 324-5).

- a constitutional amending formula that either maintained Quebec's right of veto, or was in keeping with the Constitutional Accord signed by Quebec on 16 April 1981, whereby Quebec would not be subject to any amendment which diminished its powers or rights, and would be entitled, where necessary, to reasonable and obligatory compensation;

- given the Charter of Human Rights and Freedoms was already operating in Quebec, the Charter of Rights and Freedoms to be entrenched in the Constitution

  (a) democratic rights;

  (b) the use of French and English in federal government institutions and services;

  (c) fundamental freedoms, provided the National Assembly retained the power to legislate in matters under its jurisdiction; and

  (d) English and French minority language guarantees in education, provided Quebec was allowed to adhere voluntarily, considering that its power in this area must remain total and inalienable, and that its minority was already the most privileged in Canada; and

- effect must be given to the provisions already prescribed in the federal proposal in respect of the right of the provinces to equalization and to better control over their natural resources.

Quebec then launched its own constitutional challenge, claiming that it had a historical right of veto. In the *Quebec Veto Reference*, however, the Supreme Court of Canada confirmed its decision, in the 1981 *Patriation Case*, that constitutional amendments conventionally required only a substantial degree of provincial consent. No individual province had a right of veto.

Notwithstanding that aboriginal matters were the focus of the constitutional conferences for the next several years, it is reasonable to say that Quebec concerns continued to simmer, and the Quebec government was waiting for the appropriate time to turn the nation's eyes once again to Quebec's grievances.

On 9 May 1986, Gil Remillard, the Quebec Minister of Intergovernmental Affairs, made a presentation at a seminar held in Mont-Gabriel, Quebec, that is widely

considered to have presaged the commencement of the "Quebec Round" of constitutional negotiations. This was the first public mention of the "five conditions":

> On December 2, 1985 [the Liberal election victory in Quebec], the population of Quebec clearly gave us the mandate of carrying out our electoral program, which states the main conditions that could persuade Quebec to support the *Constitution Act* of 1982. These conditions are:
>
> - explicit recognition of Quebec as a distinct society;
> - guarantee of increased powers in matters of immigration;
> - limitation of the federal spending power;
> - recognition of a right of veto;
> - Quebec's participation in appointing judges to the Supreme Court of Canada.
>
> As far as we are concerned, recognition of Quebec's specificity is a prerequisite to any talks likely to persuade Quebec to support the *Constitution Act* of 1982.

On 12 August 1986, it was announced at the 27th Annual Premiers' Conference, held at Edmonton, Alberta, that: "The Premiers unanimously agreed that their top constitutional priority is to embark immediately upon a federal-provincial process, using Quebec's five proposals as a basis for discussion, to bring about Quebec's full and active participation in the Canadian federation."

As James Hurley, Director, Constitutional Affairs, Privy Council Office, points out in his most useful paper (on the list below) the timing was not a coincidence:

> [A] double process of bilateralism was established for the "vérification des préalables": formal negotiations would not be launched unless the minimal conditions for success had been met. Gil Rémillard, the Quebec minister responsible for constitutional matters, met each of his provincial counterparts individually, and after each meeting he briefed Senator Lowell Murray, the federal Minister. Senator Murray met with each of the provincial ministers individually and briefed Gil Rémillard after each

> meeting to ensure that there were no misunderstandings or misinterpretations. (p. 7-8)

Thus the stage was set for the Meech Lake Accord.

See also:

- Bayefsky, Anne F. *Canada's Constitution Act 1982 and Amendments: A Documentary History*. McGraw-Hill Ryerson Limited, Toronto, 1989.

- Canada West Foundation. *Alternatives '91: Constitutional Tour Guide*. Calgary, 1991.

- Fogarty, Stephen. *Résumé of Federal-Provincial Conferences*, 1927-80. BP-12. Library of Parliarnent, Research Branch, Ottawa, 1980.

- Hurley, James Ross. *The Canadian Constitutional Debate: from the Death of the Meech Lake Accord of 1987 to the 1992 Referendum*. Minister of Supply and Services Canada. Ottawa. 1994.

- Library of Parliament, Reference Branch. Catalogue No. 145. *The Constituhon since Patriation: Chronology*.

PART 2: QUEBEC'S FIVE CONDITIONS

A. The Meech Lake Process

On 30 April 1987, the First Ministers met at Meech Lake, near Ottawa, and agreed on a draft document addressing Quebec's five conditions. The text of the original agreement is included as Appendix 3. It is notable in that the majority of the provisions are still in "back of an envelope" form, but the primary condition, the recognition of Quebec as a distinct society, as an interpretive provision for the entire Constitution, is already in legal language that remained essentially unchanged in the final document. Another First Ministers' Meeting was held in Ottawa on 2-3 June 1987 to confirm the final language of the Accord, and on 3 June 1987 it was tabled in the House of Commons.

On 23 June 1987, the National Assembly of Quebec passed a resolution adopting the Meech Lake Accord by a vote of 95 to 18, with the opposition Parti Québécois

dissenting. This set the clock ticking on the three-year limitation on constitutional amendments contained in the *Constitution Act, 1982*. Since all provinces and Parliament had to pass a resolution with the same wording, either the language of the amendment was immutable or Quebec would have to pass a second resolution. As of 23 June 1987, it became virtually impossible to correct even what became referred to as "egregious errors."

For the next three years, the Meech Lake Accord was at the centre of a national debate involving constitutional committees in most provinces, and an increasingly rancorous discussion over the appropriate process for constitutional amendment. After a last-ditch effort to save it in June 1990, the Meech Lake Accord died when the Manitoba legislative assembly ran out of time to pass it, in large part because of procedural problems. The Newfoundland legislative assembly, which had scheduled a vote on the resolution prior to the 23 June 1990 deadline, decided not to proceed with such a divisive issue since the Accord no longer had the possibility of receiving unanimous consent.

See also:

- Dunsmuir, Mollie. *The Meech Lake Accord Update*. BP-218. Library of Parliament, Research Branch, Ottawa, April 1990.

- Hogg, Peter. *Meech Lake Constitutional Accord, Annotated*. Carswell, Toronto, 1988.

- O'Neal, Brian. *The Failure of the Meech Lake Accord: Reasons and Reactions*. Library of Parliament, Research Branch, Ottawa, 1992.

- Prime Minister's Office. "A Guide to the Constitutional Accord of June 3, 1987." In Bayesfsky (1989), p. 961.

B. Distinct Society

The first clause of the Meech Lake Accord dealt with the issue of Quebec as a "distinct society." There are three ways, constitutionally, of looking at this issue. The first is that the rest of the country could recognize, through a simple statement in the Constitution, most often thought of as part of a Preamble, that Quebec is indeed distinct from the rest of

Canada in that it has a different legal system, is the only province that is predominantly French-speaking, and has distinct cultural/institutional arrangements.

The second possibility is for the distinctness of Quebec to become an interpretive provision of the Constitution, affecting the way in which the courts decide upon the division of powers, as well as intraprovincial matters such as education and language. This interpretive provision may, or may not, affect Charter rights, depending upon how it is phrased.

The third possibility is for Quebec's distinctiveness to be associated with the principle that Canada is based upon two equal founding nations. Although the concept of "two founding nations" is more traditionally referred to in the context of a distinct Quebec veto, it also flows over into the concept of Quebec as a distinct, and equal, partner with the other nine provinces.

The Meech Lake Accord reflected the second of these possibilities: that Quebec was sufficiently distinct to affect the interpretation of the Constitution. The federal government was given the role of protecting the bilingual nature of Canada as a whole, while the legislature and government of Quebec were to be given the responsibility to protect and "promote" the "distinct society of Quebec." It was the word "promote" that raised the spectre of special powers, or a special constitutional status, for Quebec, and largely contributed to the downfall of the Meech Lake Accord.

In the result, the provinces that objected to Meech Lake either held constitutional hearings (Manitoba and New Brunswick) or tabled an alternative proposition for constitutional reform (Newfoundland). The Manitoba Task Force found that the distinct society clause "generated the most controversy and debate during the public hearings." There were concerns that it would divide Canada into two linguistic components, that it would create two classes of citizens by giving Quebec special status, and that it would entrench "vague and undefined terms" in the Constitution. The Task Force suggested that any interpretive provision should be known as a "Canada clause," and contain a much more diverse recognition of Canadian society.

Newfoundland's proposal of November 1989 would have contained a combined Canada clause and distinct society clause in a preamble to the Constitution. The Newfoundland proposal would have accepted that Quebec is distinct from other provinces on the basis of its language, culture and legal system, but not that Quebec is different in its status and rights as a province.

In March 1990, the House of Commons set up a Special Committee to Study the Meech Lake Accord, chaired by Jean Charest. The Charest Committee released its report on 17 May 1990, and paid particular attention to a "companion resolution" to the Meech Lake Accord, introduced in the legislative assembly of New Brunswick on 21 March 1990.

Aside from proposing that the equality of the English and French linguistic communities in New Brunswick be entrenched in the Constitution, the New Brunswick Report recommended that the federal government be given the same right to "promote" the fundamental characteristic of linguistic duality in Canada as Quebec had to promote the distinct society of the province. The Charest Committee endorsed the recommendation that Parliament should be responsible for promoting Canada's linguistic duality.

The federal proposals of September 1991 included a "Canada clause" as envisaged by the Manitoba Task Force, that consisted of a number of "motherhood" statements including the "special responsibility borne by Quebec to preserve and promote its distinct culture." The Beaudoin-Dobbie Report, of February 1992, suggested an interpretive provision that, among numerous other clauses, would have referred to "the French and British settlers, who to this country brought their own unique languages and culture but together forged political institutions that strengthened our union and enabled Quebec to flourish as a distinct society within Canada."

Finally, the Consensus Report on the Constitution, known as the Charlottetown Accord of 28 August 1992, referred to the interpretation of the Constitution of Canada "in a manner consistent with" eight different "fundamental characteristics," one of which would have been that "Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition." The Draft Legal Text, released on 9 October 1992, contained identical wording. However, both documents also contained a

subclause (2) to the interpretive provision which used the words of the Meech Lake Accord in affirming the "role of the legislature and Government of Quebec to preserve and promote the distinct society."

The relationship between the Charter and the promotion of a distinct society was not entirely clear throughout the Meech Lake debate. A separate clause of the Meech Lake Accord (clause 16) stated that nothing in the new interpretive section would affect the existing interpretive provisions protecting aboriginal rights and multicultural heritage (sections 25 and 27 of the Charter), the aboriginal and treaty rights affirmed in section 35 of the *Constitution Act, 1982*, or the federal jurisdiction over Indians and Indian lands conferred by section 91(24) of *the Constitution Act, 1867*.

However, various groups who felt that they received protection from the Charter, and women's groups in particular, expressed concern that their equality rights might be impaired by the distinct society clause. The Charest Committee cited expert testimony that the distinct society clause would not affect Charter rights *per se*, but might influence when these rights would be subject to such reasonable limits as could be demonstrably justified in a free and democratic society. Both the 1991 federal proposals and the Beaudoin-Dobbie reports suggested that an interpretive provision be added to the Charter, referring to the distinct society of Quebec and the linguistic duality of Canada. The Charlottetown consensus clearly stated that both the "Canada clause" and the role of the government and legislature of Quebec in protecting and promoting the distinct society of Quebec would apply to the Charter, as well as to the rest of the Constitution.

C. The Amending Formula: A Veto or Opting-Out with Compensation

Throughout the various federal-provincial negotiations on a Canadian amending formula that would allow patriation of the Constitution, two main possibilities were discussed: a formula that would require consent from each of four regions, and a formula that would require the consent of a substantial majority of the provinces representing a certain percentage of the population of Canada.

The 1980 federal proposal was based upon a regional amending formula, commonly called the "Victoria formula"[6] that would have required the consent of any province having, or having had, 25% of the population (Ontario and Quebec), two of the Eastern provinces, and two of the Western provinces having at least 50% of the total population of the Western provinces. The Constitution could also have been amended by a referendum in which the proposed amendment was approved by both a majority of voters overall, and a majority of voters in those provinces that could assent to the amendment.

The dissenting Premiers proposed instead the "Vancouver formula," which required for most amendments the consent of at least two-thirds of the provinces having at least 50% of the population. Amendments dealing with certain subjects required unanimity:

- the office of the Queen, the Governor General and the Lieutenant Governor of a province;
- the right of a province to have at least the same number of seats in the House of Commons as the number of Senators to which that province is entitled (for example, four seats for Prince Edward Island);
- the use of the English or French language, except where an amendment is made which relates to only one or more, but not all, provinces (such as the 1993 Amendment with respect to New Brunswick);
- the composition of the Supreme Court of Canada (including Quebec's traditional right to three civil law judges); and
- amendments to the amending formula itself.

Where an amendment is made using the "general procedure," or 7/50 formula, a province can "opt-out" by a dissenting resolution if the amendment affects the legislative powers or proprietary rights of the provinces, or any other rights or privileges of a provincial legislature or government. As discussed in Part 1, this amending formula was initially

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(6) The name "Victoria formula" reflects the fact that the formula was agreed upon at the Victoria Conference in 1971, where it received the tentative agreement of all provinces. However, Saskatchewan and Quebec, for differing reasons, could not confirm their approval before the required deadline of 28 June 1971.

approved by the then Premier of Quebec and was ultimately incorporated into the *Constitution Act, 1982.*

Premier Levesque's support for the Vancouver formula, however, was premised on the inclusion of a provision that any province opting out of an amendment would receive full compensation. This provision was dropped in the November agreement between the federal government and the remaining nine provinces, although it was later partially reinstated as a guarantee of reasonable compensation where a province opted out of an amendment transferring provincial jurisdiction over culture or education to the federal government (section 40).

Because Premier Levesque's support for opting-out with compensation as a substitute for a veto has been the subject of some recent controversy, it is worth noting his views on the matter, as set out in his Memoirs (p. 325-6):

> But Quebec would be deprived of its right of veto [by joining the common front of eight provinces].* I should perhaps admit that this old obsession has never turned me on. A veto can be an obstacle to development as much as an instrument of defence. If Quebec had it, Ontario and perhaps other provinces would surely ask for it, too. And, as in Victoria in 1971, it would be possible to block change and in protecting oneself paralyse others, leaving everyone way ahead ... or behind.
>
> On the other hand, the right to opt out, which we had learned to use in the sixties -- the best example being the creation of the Caisse de dépot -- is in my view a much superior weapon, at one and the same time more flexible and more dynamic. "You wish to take this or that path we are not ready to follow? Very well, my friends, go ahead. But without us." From stage to stage, I repeat, we could create something very like a country in that fashion.
>
> * On this subject, as everyone remembers, the Supreme Court ruled in December, 1982, that in its opinion the right of veto did not exist and had never been more than a fiction. No matter how hard one might try to revive it politically, I can't see the Anglophone provinces, and even less the federal government, renouncing this judgment, which is right down their alley. At all

> events, going down this path does not appear to me to be the most promising direction for the political future.

The Meech Lake Accord would have addressed the question of a veto in two ways. It would have restored full compensation for opting out of amendments transferring legislative power from the provinces to the federal government, and it would have required unanimity for amendments to an additional group of subjects that are at present included in section 42:

- the principle of proportionate representation of the provinces in the House of Commons, as prescribed by section 51 of the *Constitution Act, 1867*;
- the powers of the Senate and the method of selecting Senators;
- the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
- all aspects of the Supreme Court of Canada;
- the extension of existing provinces into the territories; and
- the establishment of new provinces.

The unanimity requirement for the establishment of new provinces received the most widespread criticism, and both the New Brunswick Report and the Charest Report recommended that the territories should be able to become new provinces when so authorized by an Act of Parliament.

Other commentators, including the Manitoba Task Force and Newfoundland, expressed concern that increasing the number of amendments requiring unanimity would stultify, or effectively halt, constitutional change.

The 1991 Federal Proposals suggested that the Government of Canada would be prepared to revive the Meech Lake amending formula, "if a consensus on this matter were to develop" and if a new constitutional package required unanimous consent. The one exception was that the accession of existing territories to provincehood would continue to be governed by the current amending formula.

The Beaudoin-Dobbie report urged that First Ministers examine a number of approaches to the amending formula, and urged that "it should be a matter of the highest priority during this round of constitutional negotiations to find an amending formula that meets the needs of Quebec."

The Charlottetown consensus, and the Draft Legal Text, would have reinstated reasonable compensation for a province opting-out of any amendment that transferred legislative powers from provincial legislatures to Parliament, using identical language to the Meech Lake Accord. Provinces could have been created out of an existing territory through an Act of Parliament after consultation with the provinces, although the new province would have had no role in future constitutional amendments. Similarly, where a territory consented, provincial boundaries could have been extended into a territory by an Act of Parliament.

The method of selecting Supreme Court justices could have been amended using the 7/50 formula, but the unanimity provisions envisaged in the Meech Lake Accord with respect to the Supreme Court and the Senate would otherwise have applied.

See also:

- Favreau, The Honourable Guy. "The Amendment of the Constitution of Canada." 1965. In Bayefsky (1989), p. 22.

- Federal-Provincial Relations Office. "The Canadian Constitution and Constitutional Amendment." 1978. In Bayefsky (1989), p. 437.

- Dunsmuir, Mollie and Brian O'Neal. *Quebec's Constitutional Veto: The Legal and Historical Context*. BP-295. Library of Parliament, Research Branch, Ottawa, May 1992.

- Dupras, Daniel. *The Constitution of Canada: A Brief History of Amending Procedure Discussions*. BP-283. Library of Parliament, Research Branch, Ottawa, January 1992.

D. Immigration

The Meech Lake Accord included a political accord which, among other matters, committed the federal government to concluding an agreement with the Government of Quebec which would:

- incorporate the principles of the Cullen-Couture agreement on the selection abroad and in Canada of independent immigrants, visitors for medical treatment, students and temporary workers and on the selection of refugees abroad and economic criteria for family reunification and assisted relatives;

- guarantee that Quebec would receive a number of immigrants, including refugees, within the annual total established by the federal government for all of Canada proportionate to its share of the population of Canada, with the right to exceed that figure by five per cent for demographic reasons; and

- provide an undertaking by Canada to withdraw services (except citizenship services) for the reception and integration (including linguistic and cultural) of all foreign nationals wishing to settle in Quebec where services were to be provided by Ouebec, with such withdrawal to be accompanied by reasonable compensation; the Government of Canada and the Government of Quebec were to take the necessary steps to give the agreement the force of law under the proposed amendment in relation to such agreements.

An agreement similar to that envisaged in the Meech Lake Accord, between the federal and the Quebec Ministers of Immigration, came into force on 1 April 1991, and was consistent with the Cullen-Couture agreement in most ways. Unlike Cullen-Couture, but as anticipated by the Meech Lake political accord, it dealt with the delivery of reception and integration services.

It also provided for specific compensation to Quebec for settlement and language training. The compensation to be paid was set at $75 million for 1991-92, rising to $90 million by 1994-95 and subsequent years. Federal government expenditures in Quebec for the services under consideration had been approximately $46.3 million in 1990-91. The Accord contains provisions for amendments, with the consent of both parties, but not for its own termination.

At present, both the federal and provincial governments can legislate with respect to immigration (section 95, *Constitution Act, 1867*), but federal legislation takes priority in the event of a conflict between the two. The constitutional amendment proposed by the Meech Lake Accord would have required the federal government to negotiate agreements with a province, when requested, on immigration and aliens.

Although the majority of provinces already have federal-provincial immigration agreements, pursuant to existing provisions of the *Immigration Act*, the new provisions (sections 95A to 95E) would have placed such agreements beyond the reach of unilateral federal legislative change by giving them priority over the existing federal powers over immigration (section 95) and naturalization and aliens (section 91(25)). The federal government would have retained final control over "national standards and objectives relating to immigration or aliens," including "any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada."

These immigration provisions remained substantially the same from Meech to Charlottetown, with the addition or deletion of one or two minor provisions. One of these was the "equality of treatment" clause, guaranteeing all provinces equality of treatment in relation to any other province that had already concluded an agreement, "taking into account different needs and circumstances." The Meech Lake Accord, and subsequent constitutional proposals, all agreed that nothing in the Canada-Quebec agreement should be construed as preventing the negotiation of similar agreements with other provinces relating to immigration and the temporary admission of aliens. It is obvious, however, that the Canada-Quebec Accord, which guarantees Quebec up to 30% of immigrants as well as a substantial and irreducible share of the federal settlement budget, precludes equally generous agreements from being made with the other provinces.

See also:

- Young, Margaret. *Immigration: The Canada-Quebec Accord*. BP-252. Library of Parliament, Research Branch, Ottawa, July 1992.

E. The Spending Power

The concept of a federal "spending power" is a relatively recent constitutional development. By providing program funds, either unilaterally or in cooperation with the provinces, for a variety of programs in the areas of health, education and social development, the federal government has been able to substantially alter the approach to issues that were essentially within provincial jurisdiction.

The spending power thus became the main lever of federal influence in fields that are legislatively within provincial jurisdiction, such as health care, education, welfare, and regional development. By making financial contributions to specified provincial programs, the federal government was able to influence provincial policies, priorities and program standards.

Until the 1960s, most of the provinces acquiesced in this expanded federal influence, but Quebec both raised objections and refused to accept certain contributions. During the 1960s, Quebec's objections increased and other provinces also began to find the increased federal role objectionable. Accordingly, in 1964 the provinces were given the right to "opt out" of programs financed by the federal government with income tax abatements as compensation, although only Quebec took advantage of the new provision.

Provinces opposing the use of the spending power argued that the federal government ought not to be able to initiate cost-shared programs without obtaining a provincial consensus, because the operation of such programs fell to the provinces; that cost-shared programs forced the provinces to alter their spending and taxing priorities; and that the citizens of the provinces that "opted out" were subject to "taxation without benefit."

The federal government argued that the spending power was crucial in maintaining equal opportunity for individual Canadians (such as through family allowances); in equalizing provincial public services; and in carrying out programs of national importance.

The Meech Lake Accord would have constitutionalized the principle that a province may opt out of new shared-cost programs without fiscal penalty:

> Section 106A. The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the Government of Canada after the coming into

> force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

While some commentators, including the New Brunswick Select Committee, felt that the new provision would give constitutional recognition to the spending power, several smaller provinces were concerned that it might threaten national shared-cost programs. The Manitoba Task Force heard concerns that the new provision would threaten any future programs such as child care, weaken the ability of the federal government to provide national health and welfare programs, and increase regional disparities in social services. The Task Force recommended deleting it entirely.

Newfoundland shared Quebec's concern that unilateral federal action could encroach on exclusive provincial jurisdiction, but felt that section 106A could underrnine the federal government's ability to establish national programs with minimum national standards or to redress regional disparities. Section 36(1) of the *Constitution Act, 1982* contains a commitment to promote equal opportunities, redress regional disparities and provide essential public services, and Newfoundland suggested that national programs expressly declared by Parliament to be a response to these commitments be exempted from the provisions of proposed section 106A.

The 1991 Federal Proposals committed the federal government not to introduce Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of seven provinces representing 50% of the population. This provision would have been entrenched in the Constitution.

The Beaudoin-Dobbie report also endorsed section 106A, but would also have added a provision that any new Canada-wide shared-cost programs be constitutionally protected from unilateral changes over a jointly agreed-on period of time. Presumably, this was a response to the provincial outrage that greeted the federal government's limitation on increases in Canada Assistance Plan contributions to the three "have" provinces.

The Charlottetown consensus adopted section 106A, but would also have committed the federal and provincial governments to establishing a framework for federal expenditures in areas of exclusive provincial jurisdiction that:

- contributed to the pursuit of national objectives;
- reduced overlap and duplication;
- respected and did not distort provincial priorities; and
- ensured equality of treatment of the provinces, while respecting their different needs and circumstances.

See also:

- Mollie Dunsmuir. *The Spending Power: Scope and Limitations*. BP-272. Library of Parliament, Research Branch, Ottawa, October 1991.

F. The Appointment of Judges to the Supreme Court of Canada

The Supreme Court of Canada was established by ordinary federal statute and could, theoretically, be eliminated by the same means. The Meech Lake Accord would have constitutionally entrenched the Supreme Court as the highest court of appeal for Canada. The Accord would also have entrenched the size of the court at nine judges, three of whom would necessarily have been from Quebec. Although this would merely have continued the status quo, some commentators felt that it would be unwise to require provincial unanimity in order to enlarge the size of the court.

More importantly, the Accord required the Governor General to appoint judges from lists of candidates provided by the provinces. No provision was made for the possibility that the Governor General might find none of the suggested candidates suitable. Moreover, since there was no provision for a territorial government to submit lists of potential candidates, lawyers from the two territories would have been effectively precluded from sitting on the Supreme Court of Canada.

The 1991 Federal Proposals envisaged the same process for appointing judges as the Meech Lake Accord, although specific provision would have been made for territories also to submit lists of possible candidates. The government was prepared to proceed with the entrenchment of the Court and its composition, as long as it was not the only provision requiring unanimity in the next constitutional package.

The Beaudoin-Dobbie report also endorsed the appointment of judges from provincial lists, but proposed that the Chief Justice of Canada be empowered to appoint *ad hoc* justices on a temporary basis if the provincial and federal governments could not agree on a mutually acceptable candidate. The report also recommended the entrenchment of the Supreme Court and its present composition, including three judges from Quebec. The Charlottetown consensus contained fundamentally the same provisions.

PART 3: AFTER THE MEECH LAKE ACCORD

Following the failure of the Meech Lake Accord, constitutional discussions continued on several fronts, both at the federal level and in Quebec.

A. Discussion at the Federal Level

At the federal level, on 1 November 1990 the government announced the creation of what became known as the Spicer Commission. When it reported in June 1991, the Commission described a widespread disenchantment with the political environment, and concentrated on changes to process rather than substantive constitutional amendment.

The Beaudoin-Edwards Committee, a special joint committee of the Senate and the House of Commons, was established in December 1990 to examine the amending formula. In June 1991, the Committee recommended a return to the Victoria formula, a solution that was poorly received by several provinces.

In September 1991, the federal government published *Shaping Canada's Future Together: Proposals*," which set out its suggestions for constitutional change. Only constitutional amendments that could be approved by the 7/50 formula (seven provinces with 50% of the population) were actively proposed. While the government was prepared to approve amendments requiring unanimity if a consensus emerged, it was reluctant to enter into a mixed package of amendments requiring both 7/50 approval and unanimity. There was a strong desire to avoid a rerun of the Meech Lake situation, wherein a number of amendments

had had the necessary 7/50 approval but could not be proclaimed because they were not severable from other amendments requiring unanimity.

In June 1991, Parliament established the Special Joint Committee on a Renewed Canada, commonly called the Beaudoin-Dobbie Committee, which reported on 28 February 1992.

In the fall of 1991, the Government of Canada agreed to fund a parallel consultation process by the four national aboriginal associations.

> By the spring of 1992, all of the public consultations were complete. By this point, every province had concluded or was nearing conclusion of consultations with the public on constitutional renewal. The federal government had conducted three consultations: the Spicer Commission, the Beaudoin-Edwards Committee and the Beaudoin-Dobbie Committee. Five national conferences had been held. The Aboriginal peoples of Canada had conducted four consultations with their constituents and were soon to hold a national conference. The two territorial governments had also consulted their constituents.
>
> In brief, from the demise of Meech on 23 June 1990, to the spring of 1992, all governments and the Aboriginal Peoples engaged in consultations but no intergovernmental negotiations were held.(7)

In March 1992, Constitutional Affairs Minister Joe Clark launched a new multilateral process. The Multilateral Meeting on the Constitution (MMC) consisted of federal, provincial and territorial ministers, as well as the representatives of four national aboriginal associations. Quebec was not present. Four different working groups dealt with:

- the Canada clause and the amending formula;
- federal institutions, specifically the Senate;
- aboriginal peoples and their inherent and treaty rights; and
- the distribution of powers, including the spending power, the economic union and a social charter.

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(7) Hurley (1994), p. 19.

On 11 June 1992, the MMC delegations concluded their work without resolving some of the outstanding issues, including Senate reform. On 7 July, Mr. Clark met with the provincial Premiers and aboriginal and territorial representatives. Agreement was reached on a package that included the inherent right to aboriginal self-government, recognition of Quebec's distinct society, a Canada clause, an equal Senate, a veto for all provinces over subsequent institutional reform except the creation of new provinces in the territories, and strengthened legislative jurisdiction for the provinces. However, since neither Premier Bourassa of Quebec nor Prime Minister Mulroney were present at the meeting of 7 July, the agreement remained tentative.

B. Discussion in Quebec

In February 1990, the General Council of the Quebec Liberal Party passed a resolution giving the Allaire Committee, more properly known as the Constitutional Committee of the Quebec Liberal Party, a mandate to prepare "the political content of the second round of negotiations to begin after the ratification of the [Meech Lake] Accord" or, alternatively, "alternative scenarios to be submitted to Party bodies to prepare for the eventuality of the failure of the Meech Lake Accord." The Allaire report was submitted in January 1991 and, with very minor changes, became the policy position of the Liberal Party of Quebec.

The report considered it self-evident that the constitutional crisis had resulted largely from the inability of common law Canada to maintain a vision of two equal founding peoples:

> Perhaps [the failure of the Meech Lake Accord] also reflects a collective lack of willingness to live together on the historical basis of two founding peoples brought about by, among other things, a constant massive influx, especially in English Canada, of immigrants who necessarily have little knowledge of the historical origins of Canada. (p. 13)

The report also emphasized that, from Quebec's viewpoint, provincial autonomy and decentralization were at the heart of the agreement to confederate.

The report suggested a major redistribution of powers, leaving the federal government with exclusive authority over only defence, customs and tariffs, currency and the common debt, and equalization payments.

The Allaire report recommended that a Quebec referendum be held before the end of the fall 1992, either on the accession of Quebec to sovereignty or on a new Quebec-Canada constitutional reform based on the report's proposals.

The Commission on the Political and Constitutional Future of Quebec, widely known as the Bélanger-Campeau Commission, was created by the National Assembly of Quebec in September 1990, with the unanimous consent of all parties. The mandate of the Commission was to "examine and analyse the political and constitutional status of Quebec and to make recommendations in respect thereof." The Commission filed its report in March 1991.

The Bélanger-Campeau report concluded that there were only two possible solutions to the constitutional impasse: a profoundly altered federal system, or Quebec sovereignty. The Bélanger-Campeau report also called for a referendum to be held by 26 October 1992, and suggested draft legislation to establish a process by which Quebec could determine its political and constitutional future. Bill 150, An Act respecting the process for determining the political and constitutional future of Quebec, was tabled in the National Assembly in mid-May 1992 to implement these recommendations.

C. The Charlottetown Accord

Premier Bourassa, after deciding that the "essence" of the Meech Lake Accord was covered by the agreement of 7 July 1992, joined the other First Ministers for informal discussions on 4 August. After further negotiations in both Ottawa and Charlottetown, a unanimous agreement was reached on the text of the Consensus Report of the Constitution on 28 August 1992.

The First Ministers agreed to hold two referendums on 26 October 1992: one in Quebec, under Quebec legislation, to comply with the provisions of Bill 150; and the other in the rest of Canada under the provisions of the new federal *Referendum Act*. All governments agreed that the question should be: **"Do you agree that the Constitution of Canada should be renewed on the basis of the agreement reached on August 28, 1992?"**

On 26 October 1992, the Charlettetown Accord was rejected by a majority of Canadians in a majority of provinces, including a majority of Quebeckers and a majority of Indians living on reserves. The most intensive and extensive consultations ever undertaken had resulted in an Accord that was overwhelmingly rejected by the Canadian people.

See also:

- Bayefsky, Anne F. *Canada's Constitution Act, 1982 and Amendments: A Documentary History*. McGraw-Hill Ryerson Limited, Toronto, 1989.

- Canada West Foundation. *Alternatives '91: Constitutional Tour Guide*. Calgary, 1991.

- Dunsmuir, Mollie. *Constitutional Proposals of the Federal Government, September 1991*. BP-247. Library of Parliament, Research Branch, Ottawa, September 1991.

- Hurley, James Ross. *The Canadian Constitutional Debate: From the Death of the Meech Lake Accord of 1987 to the 1992 Referendum*. Minister of Supply and Services, Canada, Ottawa, 1994.

- Library of Parliament, Reference Branch. Catalogue No. 14S. *The Constitution since Patrition: Chronology*.

- O'Neal, Brian. *All or Nothing: Lessons from Canada's Constitutional Referendum* [on the Charlottetown Accord]. Library of Parliarnent, Research Branch, Ottawa, 1993.

- Dunsmuir, Mollie. *The Bélanger-Campeau and Allaire Reports*. BP-257. Library of Parliament, Research Branch, Ottawa, May 1991.

APPENDIX 1

RESPONSES TO QUEBEC'S FIVE CONDITIONS (1987 - 1992)

RESPONSES TO QUEBEC'S FIVE CONDITIONS
(1987-1992)

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
A. QUEBEC'S FIVE CONDITIONS 1. The explicit recognition of Quebec as a distinct society. At present, the Constitution has no interpretative provisions or statement of principles				
SECTION 2: INTERPRETATIVE PROVISION 1. The *Constitution Act, 1867*, is amended by adding thereto, immediately after section 1 thereof, the following section:	SECTION 2: INTERPRETATIVE PROVISION Proposal 7: *A Canada Clause in the Constitution* The Government of Canada proposes that a "Canada Clause" that acknowledges who we are as a people, and who we aspire to be, be entrenched in section 2 of the *Constitution Act, 1867* The Government of Canada believes that it would be appropriate for the following characteristics and values to be reflected in such a statement:	SECTION 2: INTERPRETATIVE PROVISION We recommend that a statement of Canada's identity and values be included in a prominent place in the Constitution. We recommend the following preamble: **PREAMBLE** We are the people of Canada drawn from the four winds of the earth, a privileged people, Citizens of a sovereign state. ... [four more verses] (p. 23)	SECTION 2: INTERPRETATIVE PROVISION 1. *Canada Clause* A new clause should be included as section 2 of the *Constitution Act, 1867* that would express fundamental Canadian values. The Canada Clause would guide the courts in their future interpretation of the entire Constitution, including the *Canadian Charter of Rights and Freedoms*. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:	SECTION 2: INTERPRETATIVE PROVISION 1. The *Constitution Act, 1867*, is amended by adding thereto, immediately after section 1 thereof, the following section:

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
2.(1) The Constitution of Canada shall be interpreted in a manner consistent with:	• a federation whose identity encompasses the characteristics of each province, territory and community;	We further recommend that a Canada Clause be included in section 2 of the *Constitution Act, 1867* and, as such, interpretative in effect.	2.(1) The Constitution of Canada, including the *Canadian Charter of Rights and Freedoms*, shall be interpreted in a manner consistent with the following fundamental characteristics:	*Canada Clause* 2.(1) The Constitution of Canada, including the *Canadian Charter of Rights and Freedoms*, shall be interpreted in a manner consistent with the following fundamental characteristics:
	• the equality of women and men;	**CANADA CLAUSE**	(a) Canada is a democracy committed to a parliamentary and federal system of government and to the rule of law;	(a) Canada is a democracy committed to a parliamentary and federal system of government and to the rule of law;
	• a commitment to fairness, openness and full participation in Canada's citizenship by all people without regard to race, colour, creed, physical or mental disability, or cultural background;	The following would be added to the *Constitution Act, 1867* as section 2:		
	• recognition that the aboriginal peoples were historically self-governing, and recognition of their rights within Canada;	*Declaration* 2. We, Canadians, all, convinced of the nobility of our collective experiment, hereby renew our historic resolve to live together in a federal state;	(b) the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of three orders of government in Canada;	(b) the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of three orders of government in Canada;
(a) the recognition that the existence of French-speaking Canadians, centered in Quebec but also present elsewhere in Canada, and English-speaking	• recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities;	We acknowledge that we are deeply indebted to our forebears:	(c) Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition;	(c) Quebec constitutes within Canada a distinct society, which includes a French-speaking majority, a unique culture and a civil law tradition;

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
Canadians, concentrated outside Quebec, but also present in Quebec, constitutes a fundamental characteristic of Canada; and				
(b) the recognition that Quebec constitutes within Canada a distinct society.	• the special responsibility borne by Quebec to preserve and promote its distinct society;	• the Aboriginal peoples, whose inherent rights stem from their being the first inhabitants of our vast territory to govern themselves according to their own laws, customs and traditions for the protection of their diverse languages and cultures;	(d) Canadians and their governments are committed to the vitality and development of official language minority communities throughout Canada;	(d) Canadians and their governments are committed to the vitality and development of official language minority communities throughout Canada;
	• the contribution to the building of a strong Canada of peoples from many cultures and lands; • the importance of tolerance for individuals, groups and communities;	• the French and British settlers, who to this country brought their own unique languages and cultures but together forged political institutions that strengthened our union and enabled Quebec to flourish as a distinct society within Canada; and	(e) Canadians are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, and continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;	(e) Canadians are committed to racial and ethinc equality in a society that includes citizens from many lands who have contributed, and continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;
	• a commitment to the objective of sustainable development in recognition of the importance of the land, the air and the water and our responsibility to preserve and protect the environment for future generations;	• the peoples from myriad other nations, scattered the world over, who came to our shores and helped us greatly to fulfil the promise of this fair land;	(f) Canadians are committed to a respect for individual and collective human rights and freedoms of all people;	(f) Canadians are committed to a respect for individual and collective human rights and freedoms of all people;

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
(2) The role of the Parliament of Canada and provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.	• respect for the rights of its citizens and constituent communities as set forth in the *Canadian Charter of Rights and Freedoms*;	• We reaffirm our profound attachment to the principles and values that have drawn us together, enlightened our national life, and afforded us peace and security, such as our unshakable respect for the institutions of Parliamentary democracy; the special responsibility of Quebec to preserve and promote its distinct society; the right and responsibility of Aboriginal peoples to protect and develop their unique cultures, languages and traditions; a profound commitment to the vitality and development of official languages minority communities; and abiding obligation to assure the equality of women and men; and the recognition of the irreplaceable value of our multicultural heritage;	(g) Canadians are committed to the equality of the female and male persons; and	(g) Canadians are committed to the equality of the female and male persons; and
(3) The role of the Legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.	• the free flow of people, goods, services and capital throughout the Canadian economic union and the principle of equality of opportunity throughout Canada;		(h) Canadians confirm the principle of the equality of the provinces at the same time as recognizing their diverse characteristics.	(h) Canadians confirm the principle of the equality of the provinces at the same time as recognizing their diverse characteristics.
(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language.	• a commitment to the well-being of all Canadians;			*Role of legislature and Government of Quebec* (2) The role of the legislature and Government of Quebec to preserve and promote the distinct society is affirmed.
	• a commitment to a democratic parliamentary system of government;		(2) The role of the legislature and Government of Quebec to preserve and promote the distinct society of Quebec is affirmed	
	• the balance that is especially Canadian between personal and collective freedom on the one hand, and, on the other hand, the personal and collective responsibility that we all share with each other.			
		We pledge to honourably discharge our responsibility to our children, so that they may do the same for their own, of ensuring their prosperity and the integrity of their environment. Therefore we, Canadians all, formally adopt this, our Constitution, including the	(3) Nothing in this section derogates from the powers, rights or privileges of the Parliament or the Government of Canada, or of the legislatures or governments of the provinces, or of the legislative bodies or governments of the Aboriginal peoples of Canada,	*Powers, rights and privileges preserved* (3) Nothing in this section derogates from the powers, rights or privileges of the Parliament or the Government of Canada, including any powers, rights or privileges relating to language and, for greater certainty, nothing in this

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
		Canadian Charter of Rights and Freedoms, as the solemn expression of our national will and hopes. (p. 23-24)	including any powers, rights or privileges relating to language and, for greater certainly, nothing in this section derogates from the Aboriginal and treaty rights of the Aboriginal peoples of Canada. 2. *Aboriginal Peoples and the Canadian Charter of Rights and Freedoms* The Charter provision dealing with Aboriginal peoples (section 25, the non-derogation clause) should be strengthened to ensure that nothing in the Charter abrogates or derogates from Aboriginal, treaty or other rights of Aboriginal peoples, and in particular any rights or freedoms relating to the exercise or protection of their languages, cultures or traditions.	section derogates from the aboriginal and treaty rights of the Aboriginal peoples of Canada. *Aboriginal and treaty rights* (4) For greater certainty, nothing in this section abrogates or derogates from aboriginal and treaty rights of the Aboriginal peoples of Canada.

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
THE CHARTER	THE CHARTER	THE CHARTER	THE CHARTER	THE CHARTER
16. Nothing in section 2 of the *Constitution Act, 1867* affects section 25 or 27 of the *Canadian Charter of Rights and Freedoms*, section 35 of the *Constitution Act, 1982* or class 24 of section 91 of the *Constitution Act, 1867*.	Proposal 2: *Recognition of Quebec's distinctiveness and Canada's linguistic duality*. The Government of Canada proposes that a section be included in the Charter stating that the *Charter of Rights and Freedoms* shall be interpreted in a manner consistent with the recognition of Quebec as a distinct society within Canada. The section would read: 25.1(1) This Charter shall be interpreted in a manner consistent with: (a) the preservation and promotion of Quebec as a distinct society within Canada; and (b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec	We recommend: The *Canadian Charter of Rights and Freedoms* should be amended to include the following section after section 25: *Quebec's distinct society and Canada's linguistic duality* 25.1(1) This Charter shall be interpreted in a manner consistent with (a) the preservation and promotion of Quebec as a distinct society within Canada; and (b) the vitality and development of the language and culture of French-speaking and English-speaking minority communities throughout Canada.	2. *Aboriginal Peoples and the Canadian Charter of Rights and Freedoms* The Charter provision dealing with Aboriginal peoples (section 25, the non-derogation clause) should be strengthened to ensure that nothing in the Charter abrogates or derogates from Aboriginal, treaty or other rights of Aboriginal peoples, and in particular any rights or freedoms relating to the exercise or protection of their languages, cultures or traditions.	[See proposed section 2(4) above.]

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
	(2) For the purposes of subsection (1), "distinct society," in relation to Quebec, includes (a) a French-speaking majority; (b) a unique culture; and (c) a civil law tradition.	(2) For the purposes of subsection (1), "distinct society," in relation to Quebec, includes (a) a French-speaking majority; (b) a unique culture; and (c) a civil law tradition. (pp. 26-7)		

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
2. *Recognition of a right to veto.*	At present, most amendments can be implemented with the consent of Parliament and the legislatures of seven provinces having 50% of the population of the country. Certain amendments, however, require unanimity: those dealing with the amending formula; the role of the Queen, Governor General or Lieutenant Governor; the right of provinces to a certain minimum number of seats in the House of Commons; the use of the English and French languages; and the composition of the Supreme Court. This has the effect of giving every province a veto in these areas.			
9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor: 40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply. 41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:	Proposal 13: *The constitutional amending formula* The Government of Canada would be prepared to proceed with changes to the amending formula as specified in the Meech Lake Accord if a consensus on this matter were to develop; if the accession of existing territories to provincehood were to proceed on the basis of the current amending formula; and if it were found desirable to proceed ultimately with any items requiring unanimous consent in the final package.	*[The Beaudoin-Dobbie report urged the First Ministers to examine a number of approaches to the amending formula.]* "Because of the importance of the amending formula, in particular to the security of those who look to the Constitution for the protection of their rights and distinctiveness, it should be a matter of the highest priority during this round of constitutional negotiations to find an amending formula that meets the needs of Quebec." (p. 94) "We endorse the recommendations of the Beaudoin/Edwards Committee on the need to review the effect of the creation of new provinces out of the existing territories on the amending procedures." (p. 95)	57. *Changes to National Institutions* Amendments to provisions of the Constitution related to the Senate should require unanimous agreement of Parliament and the provincial legislature, once the current set of amendments related to Senate reform has come into effect. Future amendments affecting the House of Commons, including Quebec's guarantee of at least 25% of the seats in the House of Commons, and amendments which can now be made under section 42 should also require unanimity.	32. Sections 40 to 42 of the said Act are repealed and the following substituted therefor: *Compensation* 40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply. *Amendment by unanimous consent* 41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

MEECH LAKE	FEDERAL PROPOSALS September 1991	BEAUDOIN-DOBBIE REPORT 28 February 1992	CONSENSUS REPORT on the Constitution 28 August 1992	DRAFT LEGAL TEXT 9 October 1992
(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;			58. *Establishment of New Provinces*	(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;
(b) the powers of the Senate and the method of selecting Senators;			The current provisions of the amending formula governing the creation of new provinces should be rescinded. They should be replaced by the pre-1982 provisions allowing the creation of new provinces through an Act of Parliament, following consultation with all the existing provinces at a First Ministers' Conference. New provinces should not have a role in the amending formula without the unanimous consent of all the provinces and the federal government, with the exception of purely bilateral or unilateral matters described in sections 38(3), 40, 43, 45 and 46 as it relates to 43, of the *Constitution Act, 1982*. Any increase in the representation for new provinces in the Senate should also require the unanimous consent of all provinces and the federal government. Territories that became provinces could not lose Senators or members of the House of Commons.	(b) the powers of the Senate and the selection of senators;
(c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;				(c) the number of senators by which a province or territory is entitled to be represented in the Senate and the qualifications of senators set out in the *Constitution Act, 1867*;
				[(c.1) the number of senators by which the Aboriginal peoples of Canada are entitled to be represented in the Senate and the qualifications of such senators;]
(d) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;				(d) an amendment to section 51A of the *Constitution Act, 1867*;
(e) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;				(e) subject to section 43, the use of the English or the French language;

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(f) subject to section 43, the use of the English or the French language;			The provision now contained in section 42(1)(e) of the *Constitution Act, 1982* with respect to the extension of provincial boundaries into the Territories should be repealed and replaced by the *Constitution Act, 1871*, modified in order to require the consent of the Territories.	(f) subject to subsection 42(1), the Supreme Court of Canada;
(g) the Supreme Court of Canada;				(g) an amendment to section 2 or 3 of the *Constitution Act, 1871*; and
(h) the extension of existing provinces into the territories;			59. *Compensation for Amendments that Transfer Jurisdiction*	(h) an amendment to this Part.
(i) notwithstanding any other law or practice, the establishment of new provinces; and			Where an amendment is made under the general amending formula that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province that opts out of the amendment.	
(j) an amendment to this Part.				
10. Section 44 of the said Act is repealed and the following substituted therefore:			60. *Aboriginal Consent*	*Amendment by general procedure*
44. Subject to section 41, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.			There should be aboriginal consent to future constitutional amendments that directly refer to the Aboriginal peoples. Discussions are continuing on the mechanism by which this consent would be expressed with a view to agreeing on a mechanism prior to the introduction in Parliament of formal resolutions amending the Constitution.	42.(1) An amendment to the Constitution of Canada in relation to the method of selecting judges of the Supreme Court of Canada may be made only in accordance with subsection 38(1).
11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:				*Exception* (2) Subsections 38(2) to (4) do not apply in respect of amendments in

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				relation to the matter referred to in subsection (1)
				New provinces 42.1 Subsection 38(1) and sections 41 and 42 do not apply to allow a province that is established pursuant to section 2 of the *Constitution Act, 1871* after the coming into force of this section to authorize amendments to the Constitution of Canada and, for greater certainty, all other provisions of this Part apply in respect of such a province.
46.(1) The procedures for amendment under section 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.				
12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:				
47.(1) An amendment to the Constitution of Canada made by proclamation under section 38, 41 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.				

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3. *A guarantee of increased powers in immigration matters* At present, immigration in a concurrent federal-provincial power under section 95 of the *Constitution Act, 1867*, with the federal legislation having paramountcy in the event of a conflict.				
THE POLITICAL ACCORD The Meech Lake Accord included a political accord which, among other matters, committed the federal government to concluding an agreement with the Government of Quebec which would: a) incorporate the principles of the Cullen-Couture agreement on the selection abroad and in Canada of independent immigrants, visitors for medical treatment, students and temporary workers, and on the selection of refugees abroad and economic criteria for family reunification and assisted relatives, b) guarantee that Quebec should receive a number of immigrants, including refugees, within the annual total established by the federal government for all of Canada proportionate to its share of the population of Canada, with the right to exceed that figure by	THE POLITICAL ACCORD *(Events between June 1990 and September 1991)* The agreement between the federal and the Quebec Ministers of Immigration envisaged in the Meech Lake Accord came into force on 1 April 1991, and was consistent with the Cullen-Couture agreement in most ways. Unlike Cullen-Couture, but as anticipated by the Meech Lake Accord, it deals with the delivery of reception and integration services.	THE POLITICAL ACCORD We support the proposal of the Government of Canada to negotiate and give more certainty to the public policy process in relation to immigration agreements with the provinces. We recommend that these agreements be constitutionally protected from unilateral amendment. (p. 81)	THE POLITICAL ACCORD 27. *Immigration* A new provision should be added to the Constitution committing the Government of Canada to negotiate agreements with the provinces relating to immigration. The Constitution should oblige the federal government to negotiate and conclude within a reasonable time an immigration agreement at the request of any province. A government negotiating an agreement should be accorded equality of treatment in relation to any government which has already concluded an agreement, taking into account the different needs and circumstances.	

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five per cent for demographic reasons, and c) provide an undertaking by Canada to withdraw services (except citizenship services) for the reception and integration (including linguistic and cultural) of all foreign nationals wishing to settle in Quebec where services are to be provided by Quebec, with such withdrawal to be accompanied by reasonable compensation, and the Government of Canada and the Government of Quebec will take the necessary steps to give the agreement the force of law under the proposed amendment relating to such agreements. Nothing in this Accord should be construed as preventing the negotiation of similar agreements with other provinces relating to immigration and the temporary admission of aliens.	Proposal 19: *Immigration* While recognizing the federal role in setting Canadian policy and national objectives with respect to immigration, the Government of Canada is prepared to negotiate with any province agreements appropriate to the circumstances of that province and to constitutionalize those agreements. *(See also Legislative Delegation, Proposal 25)*		26. *Protection of Intergovernmental Agreements* The Constitution should be amended to provide a mechanism to ensure that designated agreements between governments are protected from unilateral change. This would occur when Parliament and the legislature(s) enact laws approving the agreement. Each application of the mechanism should cease to have effect after a maximum of five years but could be renewed by a vote of Parliament and the legislature(s) readopting similar legislation. Governments of Aboriginal peoples should have access to this mechanism. The provision should be available to protect both bilateral and multilateral agreements among federal, provincial and territorial governments, and the governments of Aboriginal peoples. A government negotiating an agreement should be accorded equality of treatment in relation to any government which has already concluded an agreement, taking into account different needs and circumstances.	

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			It is the intention of the governments to apply this mechanism to future agreements related to the Canada Assistance Plan.(*) *(Asterisks in the text indicate the areas where the consensus is to proceed with a political accord)*	

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THE CONSTITUTIONAL ACCORD	THE CONSTITUTIONAL ACCORD	THE CONSTITUTIONAL ACCORD	THE CONSTITUTIONAL ACCORD	THE CONSTITUTIONAL ACCORD
3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:		The *Constitution Act, 1867*, would be amended to include the following sections after section 95.		12. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:
Agreements on Immigration and Aliens	Proposal 19: *Immigration*	*Agreements on Immigration and Aliens*	*(Repeated from the Political Accord)*	*Agreements on Immigration and Aliens*
95A. The government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.	While recognizing the federal role in setting Canadian policy and national objectives with respect to immigration, the Government of Canada is prepared to negotiate with any province agreements appropriate to the circumstances of that province and to constitutio-nalize those agreements	*Commitment to negotiate* 95B. The government of Canada shall, at the request of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.	27. *Immigration* A new provision should be added to the Constitution committing the Government of Canada to negotiate agreements with the provinces relating to immigration. The Constitution should oblige the federal government to negotiate and conclude within a reasonable time an immigration agreement at the request of any province. A government negotiating an agreement should be accorded equality of treatment in relation to any government which has already concluded an agreement, taking into account different needs and circumstances.	*Negotiated agreements* 95A.(1) The government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province. *Reasonable time* (2) Where request is made under subsection (1), the Government of Canada and the government of the province that made the request shall conclude an agreement within a reasonable time. *Equality of treatment* (3) Where an agreement is being negotiated pursuant to this section, the province negotiating the

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				agreement shall, with respect to the terms and conditions of the agreement, be accorded equality of treatment in relation to any other province with which an agreement has been concluded pursuant to this section in the context of the different needs and circumstances of the provinces.
95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.		*Agreements* 95C.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with 95D(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.		*Agreements* 95B.(1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.
(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that		*Limitation* (2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that		*Limitation* (2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that

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prescribes classes of individuals who are inadmissible into Canada.		prescribes classes of individuals who are inadmissible into Canada.		prescribes classes of individuals who are inadmissible into Canada.
(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.		*Application of Charter* (3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.		*Application of Charter* (3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.
95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.		*Proclamation relating to agreements* 95D.(1) A declaration that an agreement referred to in subsection 95C(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.		*Proclamation relating to agreements* 95C.(1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Comons and of the legislative assembly of the province that is a party to the agreement.
(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor		*Amendment of agreements* (2) An amendment to an agreement referred to in subsection 95C(1) may be made by proclamation issued by the		*Amendment of agreements* (2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the

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General under the Great Seal of Canada only where so authorized (a) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or (b) in such other manner as is set out in the agreement. 95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsections 95C(2) or any amendment made pursuant to section 95E. 95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982*, but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1).		Governor General under the Great Seal of Canada only where so authorized (a) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or (b) in such other manner as is set out in the agreement. *Application of section 46 to 48 of the Constitution Act, 1982* 95E. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95D(1), any amendment to an agreement made pursuant to subsections 95D(2).		Governor General under the Great Seal of Canada only where so authorized (a) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or (b) in such other manner as is set out in the agreement. *Application of sections 46 to 48 of the Constitution Act, 1982* 95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), or any amendment to an agreement made pursuant to subsection 95C(2).

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4. *The limitation of the federal spending power.* At present, the Constitution contains no reference to a federal spending power, or the ability of the federal government to fund programs in areas within exclusive provincial jurisdiction.				
7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:	Proposal 27: *The exercise of the federal spending power in areas of exclusive provincial jurisdiction* The Government of Canada commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50% of the population. This undertaking would be entrenched in the Constitution. The constitutional amendment would also provide for reasonable compensation to non-participating provinces which establish their own programs meeting the objectives of the new Canada-wide program	We recommend that the federal and provincial governments work together towards establishing procedures for implementing changes in terms and conditions of existing shared-cost programs. For example, we believe that one could consider fixing the program's terms and conditions under a binding intergovernmental agreement for a period of, for example, four to five years. In our view, such an approach would not undermine Parliament's authority while addressing many of the provincial governments' concerns. (p. 82) We recommend: i) that the *Constitution Act, 1867* be amended, by adding a section stating that the Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared-cost program that is established by the Government of	25. *Federal Spending Power* A provision should be added to the Constitution stipulating that the Government of Canada must provide reasonable compensation to the government of a province that chooses not to participate in a new Canada-wide shared-cost program that is established by the federal government in an area of exclusive provincial jurisdiction, if that province carries on a program or initiative that is compatible with the national objectives. A framework should be developed to guide the use of the federal spending power in all areas of exclusive provincial jurisdiction. Once developed, the framework could become a multilateral agreement that would receive constitutional protection using the mechanism described in Item 26 of this	16. The said Act, is further amended by adding thereto, immediately after section 106 thereof, the following section:

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		Canada in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that meets the objectives of the new Canada-wide program; and ii) that any new Canada-wide shared-cost program be constitutionally protected from unilateral changes to the terms of the program over a jointly agreed-on period through the approval process for intergovernmental agreements discussed at pages 68-89 [see p. 146-150]. (p. 83)	report. The framework should ensure that when the federal spending power is used in areas of exclusive provincial jurisdiction, it should: (a) contribute to the pursuit of national objectives; (b) reduce overlap and duplication; (c) not distort and should respect provincial priorities; and (d) ensure quality of treatment of the provinces, while recognizing their different needs and circumstances.	
		The following section would be added to the *Constitution Act, 1867* immediately after section 106:	The Constitution should commit First Ministers to establishing such a framework at a future conference of First Ministers. Once it is established, First Ministers would assume a role in annually reviewing progress in meeting the objectives set out in the framework.	
106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established		*Shared-cost programs* 106A.(1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a Canada-wide shared-cost program that is	A provision should be added (as section 106A(3)) that would ensure that nothing in the section that limits the federal spending power affects the commitments of Parliament and the Government of Canada that are	*Shared-Cost Program* 106(A). The Government of Canada shall provide reasonable compensation to the government of a province that chooses not

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by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives. (2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces.		established by the Government of Canada after the coming into force of this section in a area of exclusive provincial jurisdiction, if the province carries on a program or initiative that meets the objectives of the Canada-wide program. *Legislative power not extended* (2) Nothing in this section extends the legislative powers of the Parliament of Canada or the legislatures of the provinces. (p. 120)	set out in Section 36 of the *Constitution Act, 1982*	by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives. *Legislative powers not extended* (2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces. *Section 36 of the Constitution Act, 1982, not affected* (3) For greater certainty, nothing in this section affects the commitments of the Parliament and government of Canada set out in section 36 of the *Constitution Act, 1982*. *Framework for certain expenditures of money* 37.(1) The government of Canada and the governments of the provinces are committed to establishing a framework to govern expenditures of money in the provinces by the government of Canada in areas of exclusive provincial jurisdiction that would ensure, in particular, that such expenditures

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				(a) contribute to the pursuit of national objectives; (b) reduce overlap and duplication; (c) respect and not distort provincial priorities; and (d) ensure equality of treatment of provinces while recognizing their different needs and circumstances *Review at First Ministers' Conferences* (2) After establishing a framework pursuant to subsection (1), the Prime Minister of Canada and the first ministers of the provinces shall review the progress made in achieving the objectives set out in the framework once each year at conferences convened pursuant to section 37.1. *First Ministers' Conferences* 37.1 A conference of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, the first within twelve months after this Part comes into force.

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5. *Quebec's participation in the appointment of judges to the Supreme Court of Canada.*			At the present, the federal executive makes all appointments to the Supreme Court of Canada, after consultation with the bar to ensure a high standard of appointment. Conventionally, three of the nine judges have been appointed from the Quebec bar.	

The Supreme Court is not now formally referred to in the Constitution and the Meech Lake Accord contained provisions to constitutionalize the Court, as well as dealing with the appointment of judges.

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

Supreme Court of Canada

101A. (1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges,

Proposal 12. *Appointments to the Supreme Court of Canada.*

The Government of Canada will introduce a constitutional amendment to provide for a role for the provinces and the territories in Supreme Court appointments whereby appointments would be made by the federal government from lists of nominees submitted by provincial and territorial governments, the individual appointed being acceptable to the Queen's Privy Council of Canada.

In addition, the Government of Canada would be prepared to proceed with the entrenchment in the Constitution of the Supreme Court and its composition if it were found desirable to proceed with any unanimity items in the final package.

We agree with the Government proposal to amend the *Constitution Act, 1982*, to provide for the appointment of the Supreme Court judges from lists of candidates submitted by provincial and territorial governments. To prevent paralysis of the Supreme Court's activities by a drawn-out dispute, we propose the constitutionalization of a simpler version of the mechanism contained in section 30 of the *Supreme Court Act*. This section empowers the Chief Justice of Canada to appoint, on a temporary basis, an *ad hoc* justice from among judges of the Federal Court or a provincial superior court. Such an appointment would be made only if governments reach a deadlock. It would enable the Court to operate normally until a mutually acceptable candidate is found. Such amendments could be adopted under the 7/50 formula.

We also recommend that the government's proposal in its comprehensive version, merits the

17. *Entrenchment in the Constitution*

The Supreme Court should be entrenched in the Constitution as the general court of appeal for Canada.

18. *Composition*

The Constitution should entrench the current provision of the *Supreme Court Act*, which specifies that the Supreme Court is to be composed of nine members, of whom three must have been admitted the bar of Quebec (civil law bar).

19. *Nomination and Appointments*

The Constitution should require the federal government to name judges from lists submitted by the governments of the provinces and territories. A provision should be made in the Constitution for the appointment of interim judges if a list is not submitted on a timely basis.

Supreme Court of Canada

101A.(1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

Composition

(2) The Supreme Court of Canada shall consist of a chief justice, to be called the Chief Justice of Canada, and eight other judges who shall be appointed by the Governor General in Council.

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who shall be appointed by the Governor General in Council by letters patent under the Great Seal.		support of all governments. Under this proposal, the existence of the Supreme Court of Canada and its current composition, which totals nine judges including three from the province of Quebec trained in civil law, would be entrenched. (p. 60)		
101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.			20. *Aboriginal Peoples' Role* The structure of the Supreme Court should not be modified in this round of constitutional discussions. The role of the Aboriginal peoples in relation to the Supreme Court should be recorded in a political accord and should be on the agenda of a future First Ministers' Conference on Aboriginal Issues(*).	*Who may be appointed judges* 101B.(1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of a province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.
(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.			Provincial and territorial governments should develop a reasonable process for consulting representatives of the Aboriginal peoples of Canada in the preparation of lists of candidates to fill vacancies on the Supreme Court(*).	*Three judges from Quebec* (2) At least three of the judges shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.
101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province			Aboriginal groups should retain the right to make representations to the federal government respecting	*Names of candidates* 101C.(1) Where a vacancy occurs in the Supreme Court of Canada, the government of each

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may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that Province and are qualified under section 101B for appointment to that court. (2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointment from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada. (3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec. (4) Where an appointment is made in accordance with subsection (2) otherwise than as required by subsection (3), the Governor			candidates to fill vacancies on the Supreme Court(*). The federal government should examine, in consultation with Aboriginal groups, the proposal that an Aboriginal Council of Elders be entitled to make submissions to the Supreme Court when the court considers Aboriginal issues(*). *[Asterisks in the table of contents indicate areas where the consensus on some areas is to proceed with a political accord.]*	province or territory may submit to the Minister of Justice of Canada the names of at least five candidates to fill the vancancy, each of whom is qualified under section 101B for appointed to the Court. *Appointment from names submitted* (2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada. *Appointment from Quebec* (3) Where an appointment is made under subsection 101B(2), the Governor General in Council shall appoint a person whose name is submitted by the Government of Quebec. *Appointment from other province or territory* (4) Where an appointment is made otherwise than under subsection 101B(2), the Governor General in Council shall appoint a

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General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.				person whose name is submitted by the government of a province, other than Quebec, or of a territory. *Interim judges* 101D.(1) Where a vacancy in the Supreme Court of Canada is not filled and at least ninety days have elapsed since the vacancy occurred, the Chief Justice of Canada may in writing request a judge of a superior court of a province or territory or of any superior court established by the Parliament of Canada to attend at the sittings of the Supreme Court of Canada as an interim judge for the duration of the vacancy. *Interim judge from Quebec* (2) Where a vacancy in the Supreme Court of Canada results in there being fewer than three judges on the Court who meet the qualifications set out in subsection 101B(2), no judge may be requested to attend as an interim judge under subsection (1) unless the judge meet those qualifications.

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Tenures, salaries, etc. of judges

101E. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

Relationship to section 101

101F.(1) Sections 101A to 101E shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

References to the Supreme Court of Canada

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada.

APPENDIX 2

Source: *Humour Format Légal*, Les Éditions Yvon Blais Inc., 1987.


...LE COMMON LAWYER...
...LE CIVILISTE...
Pascal Elie

APPENDIX 3

TEXT OF MEECH LAKE ACCORD

MEECH LAKE COMMUNIQUE
OF APRIL 30, 1987

At their meeting today at Meech Lake, the Prime Minister and the ten Premiers agreed to ask officials to transform into a constitutional text the agreement in principle found in the attached document.

First Ministers also agreed to hold a constitutional conference within weeks to approve a formal text intended to allow Quebec to resume its place as a full participant in Canada's constitutional development.

QUEBEC'S DISTINCT SOCIETY

(1) The Constitution of Canada shall be interpreted in a manner consistent with

a) the recognition that the existence of French-speaking Canada, centred in but not limited to Quebec, and English-speaking Canada, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

b) the recognition that Quebec constitutes within Canada a distinct society.

(2) Parliament and the provincial legislatures, in the exercise of their respective powers, are committed to preserving the fundamental characteristic of Canada referred to in paragraph (1)(a).

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.

IMMIGRATION

— Provide under the Constitution that the Government of Canada shall negotiate an immigration agreement appropriate to the needs and circumstances of a province that so requests and that, once concluded, the agreement may be entrenched at the request of the province;

— such agreements must recognize the federal government's power to set national standards and objectives relating to immigration, such as the ability to determine general categories of immigrants, to establish overall levels of immigration and prescribe categories of inadmissible persons;

— under the foregoing provisions, conclude in the first instance an agreement with Quebec that would:

- incorporate the principles of the Cullen-Couture agreement on the selection abroad and in Canada of independent immigrants, visitors for medical treatment, students and temporary workers, and on the selection of refugees abroad and economic criteria for family reunification and assisted relatives;
- guarantee that Quebec will receive a number of immigrants, including refugees, within the annual total established by the federal government for all of Canada proportionate to its share of the population of Canada, with the right to exceed that figure by 5% for demographic reasons; and
- provide an undertaking by Canada to withdraw services (except citizenship services) for the reception and integration (including linguistic and cultural) of all foreign nationals wishing to settle in Quebec where services are to be provided by Quebec, with such withdrawal to be accompanied by reasonable compensation;

— nothing in the foregoing should be construed as preventing the negotiation of similar agreements with other provinces.

SUPREME COURT OF CANADA

— Entrench the Supreme Court and the requirement that at least three of the nine justices appointed be from the civil bar;

— provide that, where there is a vacancy on the Supreme Court, the federal government shall appoint a person from a list of candidates proposed by the provinces and who is acceptable to the federal government.

SPENDING POWER

— Stipulate that Canada must provide reasonable compensation to any province that does not participate in a future national shared-cost program in an area of exclusive provincial jurisdiction if that province undertakes its own initiative

on programs compatible with national objectives.

AMENDING FORMULA

— Maintain the current general amending formula set out in section 38, which requires the consent of Parliament and at least two-thirds of the provinces representing at least fifty percent of the population;

— guarantee reasonable compensation in all cases where a province opts out of an amendment transferring provincial jurisdiction to Parliament;

— because opting out of constitutional amendments to matters set out in section 42 of the *Constitution Act, 1982* is not possible, require the consent of Parliament and all the provinces for such amendments.

SECOND ROUND

— Require that a First Ministers' Conference on the Constitution be held not less than once per year and that the first be held within twelve months of proclamation of this amendment but not later than the end of 1988;

— entrench in the Constitution the following items on the agenda:

1) Senate reform including:

   — the functions and role of the Senate;

   — the powers of the Senate;

   — the method of selection of Senators;

   — the distribution of Senate seats;

2) fisheries roles and responsibilities; and

3) other agreed upon matters;

— entrench in the Constitution the annual First Ministers' Conference on the Economy now held under the terms of the February 1985 Memorandum of Agreement;

— until constitutional amendments regarding the Senate are accomplished the federal government shall appoint persons from lists of candidates provided by provinces where vacancies occur and who are acceptable to the federal government.